

LECTURE NOTES – CHAPTER 2

Why did our forefathers, some 220 years ago, set up the system of government that they did? Why did they create the Constitution in the form that it was adopted? What factors contributed to this form of government? What we wish to do first is to try to understand the factors that led to this new form of government. Keep in mind that when we say new, it was indeed new for its time. In the mid 1700s, there were no constitutional democracies in existence anywhere in this world.

First, historically, the nature of the relationship between those who governed and those who were governed has changed over time. The philosophical ideas that stated the nature of this relationship changed.

Keep in mind that these ideas are fundamentally “western” in origin. When we say western, we mean Western Europe. We don’t have to study all of western history to know where some of these philosophical ideas came from, but we do have to go back a way.

Europe, following the fall of the Roman Empire, eventually was dominated by monarchies. Rulers often assumed power through what was called “Divine Right”. In other words, they became king because it was deemed that God had divinely ordained that these people had the right to rule. Though the rule was autocratic, some rulers were more civilized to their people than others. This became the dominant form of government in Western Europe for a significant period of time, and is only worth mentioning here because it is the cultural heritage from which the founders of this country came from.

This first major event that had a significant impact on the autocratic rule of monarchies came in England in 1215. Abuses by King John caused a revolt by nobles who compelled him to execute this recognition of rights for both noblemen and ordinary Englishmen. The noblemen forced King John to sign the Magna Carta. It basically established the principle that no one, including the king or a lawmaker, is above the law.

The second major event that had a major impact on how monarchies carried out their rule occurred in the middle 1600s in England. This was known as the Puritan Revolution. The English people were bent upon the establishment of a democratic parliamentary system of civil government and the elimination of the "Divine Right of Kings." King Charles I, the tyrant who had long persecuted the English Puritans by having their ears cut off and their noses slit for defying his attempts to force episcopacy on their churches, finally clashed with Parliament over a long ordeal with new and revolutionary ideas. The Puritans, or "Roundheads" (as they were called), led by Oliver Cromwell, finally led a civil war against the King and his Cavaliers.

Though the Puritans eventually prevailed (and King Charles I was eventually beheaded), what is important for us here is not that the English people were successful in developing a more democratic government, rather what is important here is the influence of the philosophical ideas of Thomas Hobbes that came about as a result of these tumultuous times.

In our 20th century concern for popular government we sometimes forget the service performed in early modern times by the royal monarchs. It was they who suppressed feudal turbulence, established law and order, and molded the first national states. Some were incompetent and some were predatory. Overall, they served a somewhat useful purpose of allowing the development of somewhat safe society in which most citizens were allowed to prosper. It would seem to indicate that in the first three centuries of the modern era, the absolutist kings generally served a useful, and possibly necessary, function. Their role was appreciated and defended by many of their subjects. Thus, not everyone wanted more democratic rule.

During this period several philosophers defended the role of the monarchs during this period. Of these perhaps the most important to us is Thomas Hobbes. Hobbes was dismayed by civil strife then raging in England (the Puritan revolution), and thus decided that only absolute government could maintain law and order. In the book that he published in 1651, Leviathan, he argues that the original state of nature (natural law) is a condition of constant war, which rational and self-motivated people would want to end. There people, then, will establish fundamental moral laws to preserve peace.

The foundation of Hobbes' theory is the view that humans are motivated by only **selfish interests**. He theorized that basically selfish men, for their own protection, contracted with a king to rule them, but, once having made the compact, could not revoke it. To be effective, the ruler must be all-powerful. For purely selfish reasons, we are better off living in a world with moral rules than one without moral rules. Without moral rules, we are subject to the whims of other people's selfish interests. This was the beginning of the idea of the so-called "**social contract**", which means, basically, that a contract existed between those who ruled, and those that were being ruled. Though Hobbes ideas were a bit dated, they created the foundation from which another idea regarding the social contract would later be postulated that greatly influenced the Founding Fathers of this nation.

The Intellectual Revolution

As we move into the 18th century (1700s), we enter into a dynamic era in which many great new ideas were coming about, largely as a result of the growth of natural sciences: astronomy, mathematics. This period is referred to as the **Enlightenment**. Western thinkers did not, however, limit their attention exclusively to science. They began to speculate on the broader meaning of science, its ethical, political, social, and economic implications. Philosophers began to speculate on what they termed "**natural law**" and man's place in this natural order.

Though there were many who contributed, the one philosopher who had the most impact on Western thought during this period was John Locke (1632-1704). Locke's overall philosophical ideas were termed **empiricism** (pursuit of knowledge through observation and experience). However, what his impact in political ideas, which can be found in his books **Two Treatises on Government**, is at the heart of what we need to understand here. As opposed to Hobbes, Locke argued that the state of nature is a pre-political yet moral society where humans are bound by divinely commanded natural law. A social contract is made between citizens who initiate a government to prevent people from occasionally violating natural law.

In this book Locke argued that man has "natural rights": life liberty and property. To safeguard these rights men voluntarily contracted to surrender a certain amount of his sovereignty to government. The powers of government are strictly limited. Government must be built on the consent of the governed. No government can violate the individual's rights to these things. If it does, the people who set it up can and should overthrow it. The sole purpose of government was to protect a person's natural rights. These ideas would eventually have a profound impact on our founding fathers.

Though Locke is certainly the most influential of the thinkers that were proposing new ideas during this period, others contributed ideas that eventually made their way into our system of government. Among these was **Baron de Montesquieu** (1689-1755). Montesquieu was less a theorizer than a discerning student of history and a shrewd analyst of political systems. In this book, **The Spirit of the Laws**, he came to the conclusion that different types of government are best suited to various conditions. For instance, absolute monarchy is best for countries of vast area, limited monarchy for countries of moderate size like France, and republics for small states like Venice or ancient Athens. Not only did he approve of Locke's doctrine of limited sovereign, but he specified how it can best be secured – by a system that would separate the powers of government. The powers and functions of government should be equally divided among kings, lords, and commons, each on being checked by the other two. His model was converted into executive, legislative, and judicial branches in the American system.

Another related development that occurred during this period that had an impact on American society dealt with some of the concepts of economics. Some French thinkers began to teach that economics has its own set of natural laws, that the most basic of these laws is that of supply and demand, and that these laws operate best when commerce is freed from governmental regulation. This doctrine came to be known as that of **laissez faire** (or free trade and enterprise). The chief formalizer of the theory of laissez faire was **Adam Smith**, a Scottish professor of philosophy who spent time in France. His book, **Wealth of Nations**, was published in 1776 and has remained the bible of laissez faire economics ever since.

The American Revolution

As we can see, a lot of dynamic social changes were occurring during the period of the late 1600s to early 1700s. Into this atmosphere of significant change in Western Europe came the growing American colonies, and the issues leading up to the American Revolution.

The American Revolution was a fairly complex movement, and its details are more suited for history classes, but some things we should know here. Most notably, it was **not** a revolution for social changes. It was a very conservative revolution in that it set out to keep things that the colonists felt were their rights that were being denied to them by the British. To a very large degree, the Americans were very happy with their life in the Colonies, and what they were fighting for was to keep things the way they were. In addition, in the century and a half prior to 1776, American society had become fundamentally different than British and European societies, and we need to understand what these differences were.

First of all, America was geographically distant from Europe. It took one to two weeks to make the journey from Europe to America by boat. This distance began to lend itself to a growing sense of independence among the people in America. Americans could not depend upon the British to be there when they needed them, thus the Americans develop a strong ability to deal with things on their own. Americans became very practical in handling the day-to-day issues that arose in the new territory.

Secondly were the economic differences from Europe. The colonial economy was a diversified agricultural economy and had grown to be independent of Britain. With the growing surplus of agriculture came the development of merchants and manufacturing, and the beginning of trade with other nations (mostly raw materials). The colonies were not totally self-sufficient, but they were not totally dependent on Britain and Europe. American entrepreneurs were intent on protecting and expanding their own interests, and wanted to do so more and more without constraints.

Third were the social differences from Europe. Almost none of Europe's aristocracy had immigrated to America. American aristocracy was based on wealth rather than on blood. It was possible for an enterprising and lucky man of the lower classes to attain aristocratic rank by amassing a fortune. The frontier also offered an opportunity to men of humble origin, who resented aristocratic dictation, to achieve rank and privilege by moving westward and forging new wealth for themselves mostly through agriculture.

Finally were the political differences. These were probably the sharpest of all the differences. Although each colony had its own government, a common pattern had developed by 1776. Each colony had a governor who represented the authority of the British crown and who was usually chosen by the king. Each colony (except Pennsylvania) had a two house legislature. The lower house was elected by property owners, while the upper house was usually appointed by the British king or by the governor. Governors did have power of veto over legislature, but did not exercise this

often for fear of political reprisal. The court system was patterned after British courts and had incorporated tradition of English common law which included the right to a trial by a jury and due process of law. Colonial governments had grown increasingly accustomed to a wide range of freedom, and the colonists increasingly felt that it was their right to decide their own fate.

Keep in mind that the most Americans were still very much Englishmen and English citizens, and were still closely attached to their European tradition.

Starting in 1763, a gradual change in English policies began to negatively affect the colonists. On the English side, they had just finished fighting the Seven Years' War (also known as the French and Indian War) in America. It had been marked by a refusal of the Americans to raise troops and money, their blatant trafficking with the enemy (France), and by open defiance of the royal authority. England began to realize how inadequate her system of control over the colonies was. The war also left England with a huge debt, incurred in part to save the Americans from the French and the Indians. In the minds of the English taxpayers it was time for the ungrateful colonials to pay up. They started passing laws that placed new taxes on the Americas and the Americans began to resist these. More and more talk centered around the concept of "taxation without representation". In other words, the colonists felt that they were unfairly being taxed without having a say in the policies that created the taxes.

As time went by, the colonists began more resistance to the English policies. In 1773, a group of Bostonians, dressed up as Indians, raided a ship docked in Boston harbor and dumped all of the contents (mostly tea) into the harbor. This was the so-called "Boston Tea Party). It greatly angered those back in England. In response, the English pass what are called in the colonies the "Intolerable Acts", which close the port of Boston, and places Massachusetts under the control of a military commander. The British go so far as to quarter their troops in the homes of citizens. The colonials are not happy.

In 1774, at the instigation of leaders in Virginia, the First Continental Congress was summoned to meet in Philadelphia. This meeting is dominated by many very radical leaders: Patrick Henry, Samuel Adams, John Hancock, and others. Though they did not actually accomplish much other than vocal protests, the meeting showed to all the leaders of the various colonies that a general feeling of dissatisfaction with the English existed throughout the colonies. They agree to meet again the following spring.

In 1775, the Second Continental Congress gathered in Philadelphia, and the leaders move quickly to declare independence. They nominate George Washington as commander of the American armies, and charge him with raising troops. They begin to try to provide financing for the coming war. They send members to France to open diplomatic relations. Finally, they begin to create and issue papers stating their positions on various issues. During this time, a variety of skirmishes take place between the English army and the colonials. Finally, in June of 1776, a committee is selected to write a formal declaration of independence.

Although Benjamin Franklin, John Adams, Thomas Jefferson, Roger Sherman and Robert B. Livingston comprised the committee charged with drafting the Declaration, the task fell to Jefferson, regarded as the strongest and most eloquent writer. The document is mainly his work, with a few minor exceptions. Its purpose was to set forth the principles upon which the Congress had acted two days earlier when it voted in favor of Richard Henry Lee's motion to declare the freedom and independence of the 13 American colonies from England. The Declaration was designed to influence public opinion and gain support both among the new states and abroad -- especially in France, from which the new "United States" sought military assistance.

As a scholar well-versed in the ideas and ideals of the French and English Enlightenments, Jefferson found his greatest inspiration in the language and arguments of English philosopher John Locke, who had justified England's "Glorious Revolution" of 1688 on the basis of man's "natural rights." Locke's theory held that government was a contract between the governed and those governing, who derived their power solely from the consent of the governed and whose purpose it was to protect every man's inherent right to property, life and liberty. Jefferson's theory of "natural law" differed in that it substituted the inalienable right of "the pursuit of happiness" for "property," emphasizing that happiness is the product of civic virtue and public duty.

Jefferson emphasized the *contractual justification* for independence, arguing that when the tyrannical government of King George III of England repeatedly violated "natural law," the colonists had not only the right but the duty to revolt. Basically, the Declaration held that the British government had violated their rights as Englishmen and thus had no claim of allegiance of its subjects. They were therefore entitled to form a new contract to ensure their rights. Consent of the governed made the exercise for political power legitimate, not divine rights or tradition.

The assembled Continental Congress deleted a few passages of the draft, and amended others, but outright rejected only two sections: 1) a derogatory reference to the English people; 2) a passionate denunciation of the slave trade. The latter section was left out, as Jefferson reported, to accede to the wishes of South Carolina and Georgia, who wanted to continue the importation of slaves. The rest of the draft was accepted on July 4, and 56 members of Congress began their formal signing of the document on August 2, 1776.

You should read the preamble and first part of the Declaration (down to the part that begins listing specific grudges that the colonists had against the King of England) that is located in the back of your textbook. It is one of the most eloquent statements for freedom in the history of western civilization.

War was fought for a significant period of time (we won't deal with it here, it is somewhat chronicled in your textbook, but is mostly better left to history courses). It ended with the Treaty of Paris in 1783, in which Britain recognized America's independence and ceded to America all territories east of the Mississippi from the Great Lakes to Spanish Florida.

Besides the Declaration of Independence, the Second Continental Congress had also begun the creation of a new government. Dominated by strong radicals, they had a very intense distrust of strong government over which the populace had no control. Also, they had the long tradition of existing as separate colonies. The new government reflected these feelings. The result of this work ultimately led to the Articles of Confederation which were originally shaped in 1777, and were ultimately adopted by all the states by 1781. They established a national congress in which each state had one vote. It was given authority to conduct foreign affairs, declare war, issue money, raise armies, fix weights and measures, and borrow money. However, it was not given the power to tax or to regulate commerce among the states! The Articles thus established a loose union of thirteen nearly independent states headed by a central government that could not compel them to do anything but could only encourage them to cooperate.

A New Constitution

The Articles survived until 1789. The primary problem facing the new states dealt with problems of regulating commerce. Some states were issuing paper money which was nearly worthless, which caused inflated prices, benefited debtors, and nearly wiped out the fortunes of the wealthy. There was no uniform monetary standard, and policies favoring debtors over creditors did not please the economic elite, who had once controlled the states' legislatures.

In 1786 an important event occurred in western Massachusetts that had a profound impact on the thinking of the economic elite throughout the states. A series of armed attacks by farmers on courthouses to prevent judges from foreclosing on their farms. These attacks were led by former Revolutionary War Captain Daniel Shays, and came to be known as Shay's Rebellion. Many of these farmers were former Revolutionary War veterans who had been promised against foreclosure during their tenure in the war (the colonies did not have money to pay the soldiers during the Revolutionary War, so they were promised land instead). This further frightened the economic elite. They were scared at the thought that people had taken the law into their own hands and violated the property rights of others. A general fear of lawlessness moved the elite to action.

In May 1787 the Congress under the Articles authorized a convention "for the sole and express purpose of revising the Articles of Confederation". Representatives from 12 states (only Rhode Island was absent) were sent to Philadelphia (a total of 55 delegates). Most of the delegates were wealthy, many had a college education, and most also had practical political experience. Rather than working on revising the Articles, the convention delegates immediately decided to scrap the Articles in order to write a new Constitution (please note that they did not have the authority to do this).

Major Issues facing the delegates:

The first major issue dealt with **representation** and the makeup of the new legislature. Two plans were proposed for the new Congress.

The New Jersey plan (or “Small State plan”) called for each state to be equally represented in the new Congress, just as they were under the Articles. When we say small state, we mean states that were small in terms of population. Smaller states were concerned that if the new Congress was based on population they would not have as much of a say in policies.

The Virginia plan (or “Large State plan”) called for giving each state representation in Congress based on the state’s share of population. The fear of the large states was the equal representation with the smaller states would thwart the will of the majority of the populace.

The ultimate solution to these two positions came with what has been called the **Great Compromise, or sometimes the Connecticut Compromise**. Roger Sherman and William Johnson of Connecticut proposed that the new Congress be made up of two houses. One body, the Senate, would have equal representation of each state (each state would have two members). The second body, the House of Representatives, would have representation based on population. This compromise satisfied the needs of both groups advocating the two separate positions.

The second major issue that confronted the delegates was that of **slavery**. Slavery was still legal in every state except Massachusetts. It was, however, concentrated in the south. The southern states were heavily dependent upon agriculture for the support of their economies, and this intense agriculture required the heavy use of manpower to make it economically feasible. To the southern delegates, the only way to keep their economies supportable was the continued use of slavery. This issue threatened to divide the convention and keep the states from being united. In a way, the delegates of the convention “punted”, not dealing directly with the issue but in many ways leaving some of the thorniest problems to future generations. The delegates could only agree that the new Congress could limit the future importation of slaves. They also agreed that slavery could be outlawed after 1808, rather than outlawing it outright at this point in time. A major problem, however, was how to count slaves with regard to population in determining representation. Southern states were adamant that slaves should be counted as people when discussing **apportionment** (how many members of the House of Representatives each state was to get). Ultimately, the convention agreed on what is known as the **three-fifths compromise** (sometimes called the North-South compromise). Every five slaves would count as three persons for determining population. It was an ugly solution that would lead to horrible consequences later in the history of the young country, but it was necessary to hold the new, fragile, coalition together.

Providing for Limited Government and Giving the People a Voice

As we have stated previously, the people of the colonies were deeply suspicious of governing power. Even though the delegates to the Convention wished to strengthen the powers of the central government, they also were aware that too much power in any one level of government could eventually lead to abuses of power. Thus, one of the main goals of the Convention was the establishment of a national government that was

restricted in its lawful uses of power (**limited government**), and that gave the people a voice in their governance (**self-government**). The Constitution seeks to establish a government strong enough to enforce national interests, but not so strong to destroy liberty. Thus the document creates a rather complicated and intricate system of government. The primary architect of this was James Madison. Among the specific features built into the Constitution to accomplish are as follows:

- 1) limited government was built into the Constitution through both specific **grants of power** and **denials of power**. Each branch of government was given specific tasks which they could or could not do (will discuss more in federalism and in chapters specifically on each branch later in semester). Examples: Article I, Section 8 defines Congress's lawmaking authority and confines it to 17 specific powers. One denial of power is that the writ of habeas corpus cannot be suspended (except in time of war. A court order which enables persons detained by authorities to secure an immediate inquiry as to the causes of their detention).
- 2) Framers sought to check power with power (Madison: "ambition must be made to counteract ambition") by dividing the authority of the government so that no single institution could exercise great power without the agreement of other institutions. This was known as **separation of powers**.
- 3) Limited government was reinforced by a system of separated institutions sharing power, creating elaborate **checks and balances** between the three branches of the national government.

There are other limitations within our system of government that also help to limit the power of the national government:

Federalism. This helps to protect liberty by dividing power further between the national and state/local levels of government (discussed further in Chapter 3).

The Bill of Rights. Added after Constitution was adopted. Designed to protect individuals' **civil liberties** (discussed further in Chapter 4) from being taken away by the national government.

Finally, a very important check on the legislative and executive branches is the judiciary, which ultimately determines whether the government is operating within its constitutional framework of powers. **Marbury v Madison (1803)** established the principle of **judicial review**. Please make sure you read about this case in your text and understand its implications.

In terms of providing for self-government, the framers were more reluctant to give direct power to the citizens. The framers feared the **tyranny of the majority** and proposed to control the power of the majority. (Actually, they called it **faction**, and feared both majority and minority factions. Madison wrote directly about this in **Federalist Number 10**, which is located within your textbook and is highly recommended reading. It is considered one of the finest essays on political thought in the history of western civilization.). Madison believed it was essential to keep most of government beyond the control of majority factions. Thus, the framers distinguished between a **democracy** and a **republic**.

- 1) in a direct democracy the public decides issues directly.
- 2) In a republic, or representative government, officials elected by the public meet in representative institutions to decide policy for the public.
- 3) The Framers adopted the trustee theory of representation as proposed by the philosopher Edmund Burke. Representatives were trustees, not necessarily obligated to the majority.

It is important to note that NO PROVISIONS WERE MADE FOR DIRECT POPULAR PARTICIPATION AT THE NATIONAL LEVEL.

Only the House of Representatives would be elected directly by the people, but not at large, only within districts to be equally divided on the basis of population. House members also serve only two year terms. The House is thus designed to be more responsive to the will of the people.

Senators were to be appointed by the legislatures of each state and serve 6 year terms. This makes them less susceptible to the will of the people.

The president was to be chosen by electors from each state rather than a popular election. Each state has as many electors as members of Congress and can appoint them in any manner they seem fit. President serves 4 year terms.

Judges were to be appointed rather than elected.

All these things severely limit the ability of you the voting public to have access to the people who run your government. Essentially the Framers did not trust the will of the people in making governing decisions!

It is important to note that this Constitution creates a very deliberate decision making process. It has a built-in conservative bias because it favors the *status quo*. Change is slow and awkward. When change has occurred it is when there has been a *sizable majority* wanting something. The Madisonian system encourages moderation and compromise, and retards change. This is one of the reasons why it has been called an elitist document by some.

Your textbook discusses how this has changed some over the history of the United States. Jefferson championed greater citizen participation, but really made little impact.

Jacksonian Democracy – changed the election of the president into a system more based on popular vote (**unit rule**). Abolished property ownership as a requirement for voter registration. Promotion of grass-roots parties.

Progressive Era (late 1800s early 1900s). Many reforms. (17th Amendment, 1913, provided for the direct election of Senators, 19th Amendment, gave women the right to vote.

Make sure you read this section and understand how the Constitution has changed gradually over time due to these movements.

Ratification of the Constitution

Immediately after the creation of the new Constitution, a fierce battle erupted between the so-called **Federalists** and **anti-Federalists**. The Federalists favored a stronger, more powerful central government. The Federalists were led by Madison, Alexander Hamilton, and John Jay, who, separately, wrote a series of papers (under the pseudonym of “Publius”) called the Federalist Papers (85 articles published in newspapers around country). These papers defended the proposed Constitution in detail, but also represented an important statement of political philosophy.

The Anti-Federalists, led primarily by Jefferson, feared that the new Constitution was a *class-based document* intended to ensure that a particular economic elite controlled the public policies of the proposed national government. They feared that the new government would erode *fundamental liberties* and would *weaken the power of the states*. They thought that the new government was a threat to the hard fought freedom that they had just fought a war to achieve and worried about the government being run by an elite few. They insisted on a Bill of Rights to protect individuals. As a compromise the Federalists promised to add new amendments to the document specifically protecting individual liberties immediately upon adoption of the new Constitution.

Ratification of the Constitution

Members of Constitutional Convention specified that each state must ratify the new Constitution by a **state convention** rather than the state legislatures. Also, they stated that it would take effect if **only two-thirds (nine states)** of the states approved of it, rather than all the states (as had been the mandate of the convention). They were keenly aware that getting all of the states to agree to the new document was probably not feasible. Thus they took the power to approve away from the government of the Articles of Confederation (which would have required all states to agree to the new document).

On December 7, 1787, Delaware was first of the states to approve the new Constitution. Within six months nine states had approved. The others quickly followed for fear of being left out.

On April 30, 1789, George Washington took the oath of office to be sworn in as the first president of the new national government.

How to change the Constitution

Formal Amendments

Formal amendments can be added to the Constitution by one of two methods. This is essentially a two-step process, proposal and ratification and each of these two steps has two possible procedures.

Proposal

Congress can propose an amendment by a 2/3 vote of both houses (this is the only method which has ever been used)

-or-

A national convention called by Congress at the request of 2/3's of the state's legislatures (this has never been used)

Ratification

By a vote of 3/4's of the state legislatures (all but one of the amendments – 26 times)

-or-

By special conventions called in 3/4's of the states (used only once, the 21st Amendment, which repealed the 18th Amendment)

As of today, there are a total of 27 Amendments to the Constitution of the United States.

Summary: U.S. Constitutional Democracy Today

The United States today has a hybrid system of constitutional democracy that combines original counter-majoritarian elements with newer majoritarian aspects.

1. The U.S. conducts elections for the House of Representatives and for the chief executive more frequently than any other democracy.
2. Popular rule in the U.S. is illustrated by primary and general elections.
3. Less majoritarian elements of the U.S. system are the separation of powers and staggered terms of office which encourage separate constituencies.
4. The link between an electoral majority and a governing majority is less direct in the American system than in European democratic systems.

This is a complex system of government, deliberately so, in order that any one person or group could not be able to take control of government and set unpopular policies. Understanding it takes a considerable amount of time. It asks a lot of the people, but offers much, in terms of individual liberty, in return. It has now been our guiding document for over 200 years, and is currently the oldest system of government on the planet.